IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1107 OF 1999.

Madan Harmat : Appellant.

versus

M/s.Shipping Corporation of India Ltd & Anr. : Respondents.

Mr.N.M.Ganguli for the appellant.

Mr.Taria Baig with Ms.S.Desai i/by M/s.Bhatt & Saldanha for Respondent No.1.

CORAM : D.G.DESHPANDE,J.

DATED : 4th March 2005.

ORAL ORDER

1. This appeal is filed by the original applicant/claimant challenging the order of the Commissioner for Workmen's Compensation and Judge Third Labour Court, Bombay dated 16th May 1994 by which the applicant's application for compensation was rejected. It was filed under Section 3 of the Workmen's Compensation Act and by which compensation of Rs.3,00,000/- was

claimed.

2. The case of the appellant was that he was working as seaman since 1956 and, on 31st December 1991 while he was doing the work of chipping, he suffered injury by an accident and felt numbness of limbs and paralysis of the right side of his body. He was given treatment and rest. On 1st January 1992 he was hospitalised when the ship reached at Dubai Port. On 6th January 1992 he was sent back to Bombay and was admitted in Harkishandas Hospital where he was up to 3rd February 1992. He was examined by Medical Board. On 6th April 1992 it was certified that he was permanently unfit for sea services due to right side hemiplegia. It is in this background the application for compensation came to be filed against the respondent/employer. The Commissioner framed following two issues :-

> Does the Applicant prove injury is caused arising out of and in the course of his employment he got hemiplegia ?
>
> Does Opposite Party prove that the Applicant is not entitled to compensation

amount ?

3. The Applicant led his evidence, oral as well as documentary in the form of certificate about treatment and his incapacity. His contention was rejected by the Commissioner on the ground that hemiplegia or paralysis was firstly not an injury; secondly there was no accident; thirdly there was no actual relationship between the work done by the applicant and the disease from which he ultimately suffered i.e paralysis. All these findings and the ultimate order of dismissal of the application are challenged in the present appeal.

4. The counsel for the appellant strenuously urged that there is direct relationship between the work done by the appellant and the disease or paralysis from which he ultimately suffered. According to him, attack of paralysis, from which the applicant ultimately suffered, was firstly because of the nature of work which the applicant was doing and, secondly, it was because of the accident and the injury suffered during the course of employment. He relied upon different

authorities. They are:-

(1) 2004 1 CLR 234 [Chandramathi v. Employees' State Insurance Corporation]

(2) 2000 II CLR 932 [Sulochana (Smt) v. A.P. State Road Transport Corporation & ors.]

(3) AIR 1970 SC 1906 (Mackinnon Mackenzie & Co.Pvt.Ltd. v. Ibrahim Mahommad Issak]

(4) 1984 Lab I. C. 521 (Samir U.Parikh v. Sikandar Zahiruddin]

5. In the case of Kerala High Court, reported in **2004 1 CLR 234 [Chandramathi v. Employees' State Insurance Corporation]** and referred to above, the deceased employee was working as a distributor of milk for four hours in the morning and four hours in the afternoon. He was distributing the milk with the help of bicycle. He was already suffering from heart ailment and while he was distributing the milk on a particular day, his bicycle fell into a pit

and, he had heart attack and then in that background of the matter a claim petition came to be filed. The Kerala High Court found, after ascertaining the evidence, that the duty, which the deceased was doing, was of arduous nature; he fell down from the bicycle; he developed chest pain while on duty and, therefore, there was a casual connection between the death of workman and his employment.

6. The second judgment of Andhra Pradesh High Court, reported in **2000 II CLR 932 [Sulochana (Smt) v. A.P. State Road Transport Corporation & ors.]**, was in respect of lady conductor. After going through the medical examination before appointment she was found medically fit; she worked for a year and then she was terminated by an order on the ground that she was found to be suffering from diabetic. The question in that case was, whether a diabetes could be a cause for removing the said lady conductor from service.

7. The third judgment was of the Supreme Court reported in **AIR 1970 SC 1906 (Mackinnon Mackenzie & Co.Pvt.Ltd. v. Ibrahim Mahommad**

Issak]. In that case, a claim petition was filed wherein a seaman was missing while on duty. The claimants contended that if the sea man was on duty and was missing, then they were entitled to receive compensation. However, the Supreme Court held that when the sea man was found missing; he was not supposed to be on deck and, therefore, it could not be said that he died as a result of accident suffered while on duty. It was in this background the Supreme Court considered as to what could be the liability of the employer and what could be the accident in particular circumstances.

8. The last judgment relied upon by the appellant was of the Bombay High Court reported in **1984 Lab I. C. 521 (Samir U.Parikh v. Sikandar Zahiruddin]**. It was in respect of powers of the Commissioner to fix the compensation. It was held in para 12 of the said judgment that "Part II of Schedule I of the Act prescribes only minimum compensation. But the Commissioner was empowered to come to his own conclusion depending on the facts of each case, about percentage of loss of earning capacity and to award compensation accordingly."

9. In my opinion, none of these judgments can come to the rescue of the appellant in this case. Because the basic question involved in this case is, whether the appellant succeeded in proving that the attack of paralysis, which he suffered while on ship, was due to any accident suffered by him while on duty and in the course of employment. There is nothing on record to show that the nature of work which the appellant was doing was of such a nature and such a type that anybody doing similar type of work for similar period of time would have suffered from this same type of disease i.e. paralysis. The job of the appellant was for removing paint. Neither it could be said that it was a job of involving mental faculty or emotional faculty, nor it could be said that it was a job of arduous nature and beyond the capacity of the appellant. There is absolutely no evidence in this regard. There is no evidence that the appellant was, earlier to the accident, suffering from any other disease which arose in the course of employment. There is no evidence of any accident on the particular date. In the case before the Kerala High Court, referred to above, at least there the

deceased while carrying the milk fell down from his bicycle. Whether it was a direct cause or indirect cause of his death is a different question. But an incident which can be termed as accident occurred and in that background of the matter, the Kerala High Court came to the conclusion in favour of the applicant. In this instant case, there is absolutely nothing on record to suggest that, neither it is a case of the appellant that anything which could be termed as accident occurred and then he suffered from the attack of paralysis. The preamble of the Workmen's Compensation Act provides as under:-

> "An Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident."

The present case is neither of any injury nor of an accident. It is a case of illness. The appellant was about 45 years of age at the time when he suffered from paralysis. There is no connection with the disease of the appellant i.e. paralysis and the job which he was doing. The

commissioner was, therefore, fully justified in dismissing the application. I do not find any merit in this appeal and it is required to be dismissed. However, when questioned, the counsel for the respondent fairly conceded that looking to the facts that before the appellant suffered from paralysis he had put in about more than 25 years of service, the respondents would have no objection to make ex-gratia payment of Rs.15,000/-. Hence the order:-

:ORDER:

Appeal is dismissed with costs.

The aforesaid statement of the counsel for the respondent is accepted. Respondent to make ex-gratia payment of Rs.15,000/- to the appellant within eight weeks from today.

[D.G.DESHPANDE]

04/03/2005 JUDGE.